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OFFICE OF PETITIONS

In re Patent No. 7,622,302 : DECISION ON REQUEST
Barton et al. : FOR RECONSIDERATION OF
Issue Date: November 24, 2009 : PATENT TERM ADJUSTMENT
Application No. 10/552,571 : and
Filed: October 11, 2005 : NOTICE OF INTENT TO ISSUE
Attorney Docket No. PB60213 : CERTIFICATE OF CORRECTION
:

This is a decision on the petition filed on January 22, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by four hundred ninety (490) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **four hundred sixty-eight (468)** days.

Patentee's calculation fails to take into account that a notice of appeal was filed on June 25, 2009. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period is 22 days, beginning on February 22, 2008 and ending on August 22, 2008, the date of issuance of the patent. Thus, B delay is 387 (409 - 22) days. (The 105 days accorded at issuance was for B delay. The 105 days is being removed and corrected to 387 days). As such, the patent term adjustment is being increased to 468 days.

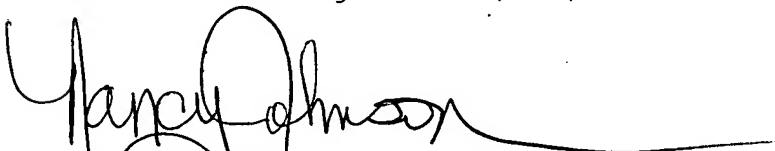
The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **four hundred sixty-eight (468) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a long horizontal flourish extending to the right.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,622,302 B1

DATED : November 24, 2009

DRAFT

INVENTOR(S) : Barton et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 186 days

Delete the phrase "by 186 days" and insert – by 468 days--